06/07/06 Bmtg Item
Scott River Watershed
Deadline: May 10, 2006

YUROK TRIBE

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May 9, 2006

Song Her, Clerk to the Board

State Water Resources Control Board

1001 I Street

Sacramento, California 95814

The comments below incorporate by reference previous comments filed by the Klamath Basin Tribal Water Quality Work Group (KBTWQWG) and the Yurok Tribe with the North Coast Regional Water Quality Control Board (NCRWQCB) on the *Action Plan for the Scott River Watershed Sediment and Temperature Total Maximum Daily Loads*, a pre-draft released for the technical review group and the *South Fork Scott River Watershed Pilot Study for the Total Maximum Daily Load for Sediment*. These comments are focused flow issues and the time lines for implementation of the various actions required under the *Scott River TMDL*. Time line comments are only provided if specific time frames need revision.

Sincerely,

for

Howard McConnell

Chairman, Yurok Tribe

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Flow Issues

The *Scott TMDL Amendment* to the *Basin Plan* does not mandate flow increases to support beneficial uses: "The Regional Water Board encourages water users to develop and implement water conservation practices." This is surprising given the fact that the narrative of the amendment states that: "Diversions of surface water……have the potential to affect temperatures in smaller tributaries where the volume of water diverted is relatively large compared to the total stream flow." Kier Associates noted that surface water diversion in Shackleford Creek was causing the stream to warm and then dry up before reaching the Scott River, causing a complete loss of salmon and steelhead carrying capacity. This assertion was based on thermal infrared radar (TIR) data that was collected in conjunction with the Scott River TMDL (Watershed Sciences, 2003). This is a clear case of water quantity being linked to water quality and the ability to support beneficial uses. Previous comments by Kier Associates and the KBTWQWG cite case law precedents that allow water quality authorities to increase stream flows when flow is clearly the causal mechanism of water pollution.

The lack of support of beneficial uses due to flow depletion is also an issue in the Scott River canyon. The *Scott River Adjudication Decree* (CSWRCB, 1980) mandated minimum flows (Table 1) to support aquatic ecosystem function: "These amounts are necessary to provide minimum subsistence-level fishery conditions including spawning, egg incubation, rearing, downstream migration, and summer survival of anadromous fish, and can be experienced only in critically dry years without resulting in depletion of the fishery resource."

Table 1. Minimum flow instream water right allocations to the U.S. Forest Service for Scott Riviera canyon by 1980 *Scott River Adjudication.*

Months	Minimum Flow in CFS
November - March	200
April - June	150
June 16 - June 30	100
July 1 - July 15	60
July 16 - July 31	40
August - September	30
October	40

The flow levels as shown in Table 1 are not being met, which should trigger enforcement action by the State Water Resources Control Board to meet previously defined minimums, not voluntary action.

The State Water Resources Control Board should work cooperatively with the California Department of Fish and Game (CDFG) to see that permits issued for stream alterations

(Code 1600) for diversions are only issued if sufficient water is left in the stream to maintain stream flow and support of beneficial uses. The 1603 permits issued by CDFG must be renewed every five years and reconsideration of beneficial uses should be included as permits are up for renewal. The SWRCB (Division of Water Rights) is both trustee and responsible agency on these issues and it is within their authority to ask for environmental review and imposition of conditions to protect beneficial uses in regards to diversion related CDFG 1603 permits.

Lack of ability to meet minimum surface flow requirements in the Scott River canyon are due in part to an increase in ground water pumping of aquifers that also feed surface flows. Kier Associates and QVIC presented well log data collected by the California Department of Water Resources (CDWR) that clearly shows ground water recharge has been diminishing as the number of wells has increased. The *Scott River TMDL Amendment* designates Siskiyou County as the entity to study ground water, which is inappropriate. The SWRCB Division of Water Rights should conduct this study and take expeditious action to reduce pumping, if data support that conclusion. In the interim, Siskiyou County and the SWRCB Water Rights Division should not permit any additional ground water pumps to be installed in the Scott Valley floor. If it is determined that groundwater is interconnected with surface flow, the State Board should inform the Siskiyou County Superior Court that the *Scott River Adjudication* must be revised.

Kier Associates pointed out in previous comments that cumulative watershed effects related to logging were increasing sediment loads, which cause the stream bed to aggrade and in the worst case cause loss of surface flows during low flow periods. The SWRCB should consider setting prudent risk limits for disturbance by logging or road building and prohibit or severely limit such activities on unstable areas like decomposed granitic soils and landslide zones.

Time Lines

All comments on the *Scott River TMDL* provided by Kier Associates and KBTWQWG pointed out that the Pacific Decadal Oscillation (PDO) cycle greatly influences both the productivity of ocean conditions and wet-dry cycles on land that effect Pacific salmon stocks. We are currently in a good ocean and wet on land cycle, but these conditions are likely to reverse some time between 2015 and 2025 (Collison et al, 2003). Therefore, the 40 year time line for recovery of the Scott River is unacceptable to the Tribes because salmon species may be lost, if conditions are not improved before that time.

Fall chinook salmon returns to the Scott River in 2004 and 2005 were the lowest on record (467 and 756) and are dangerously close to the minimum population size for maintaining long term genetic viability of this stock (Figure 1). Higgins et al. (1992) discussed the risk of extinction of northwestern California Pacific salmon stocks and discussed minimum viable population sizes:

"When a stock declines to fewer than 500 individuals, it may face a risk of loss of genetic diversity which could hinder its ability to cope with future environmental changes (Nelson and Soule 1986). A random event such as a drought or variation in sex ratios may lead to extinction if a stock is at an extremely low level (Gilpin and Soule 1990). The National Marine Fisheries Service (NMFS, 1987) acknowledged that, while 200 adults might be sufficient to maintain genetic diversity in a hatchery population, the actual number of Sacramento River winter run chinook needed to maintain genetic diversity in the wild would be 400- 1100."

Immediate action is warranted to prevent stock loss, not the long process of steps recommended in the *Scott River TMDL Amendment to the Basin Plan.*

Road and erosion control plans for roads is a reasonable time frame, however, the *Scott River TMDL Amendment* says that such plans will only be required on a site specific basis. This means that only roads involved in new timber harvest activities or that have major problems with failures that are called to the attention of the NCRWQCB staff are likely to be the subject of erosion control plans. Major problems can also result from the legacy of abandoned roads and skid roads that are not likely being examined by staff, but could still cause significant problems. As mentioned above, the SWRCB should consider limiting the road density in Scott River sub-basins to prudent risk levels.

The time line suggested in the Temperature and Vegetation section of Table 4 is inappropriate, particularly since it requires only that "The Regional Water Board's Executive Officer report to the Regional Water Board on the status of the preparation and development of appropriate permitting and enforcement actions." Ranchland owners have removed large riparian cottonwoods without permits and immediate action should be taken to prevent further riparian removal. Kier Associates (1999) pointed out that "flood control" activities after the January 1997 storm had a disastrous impact on riparian vegetation.

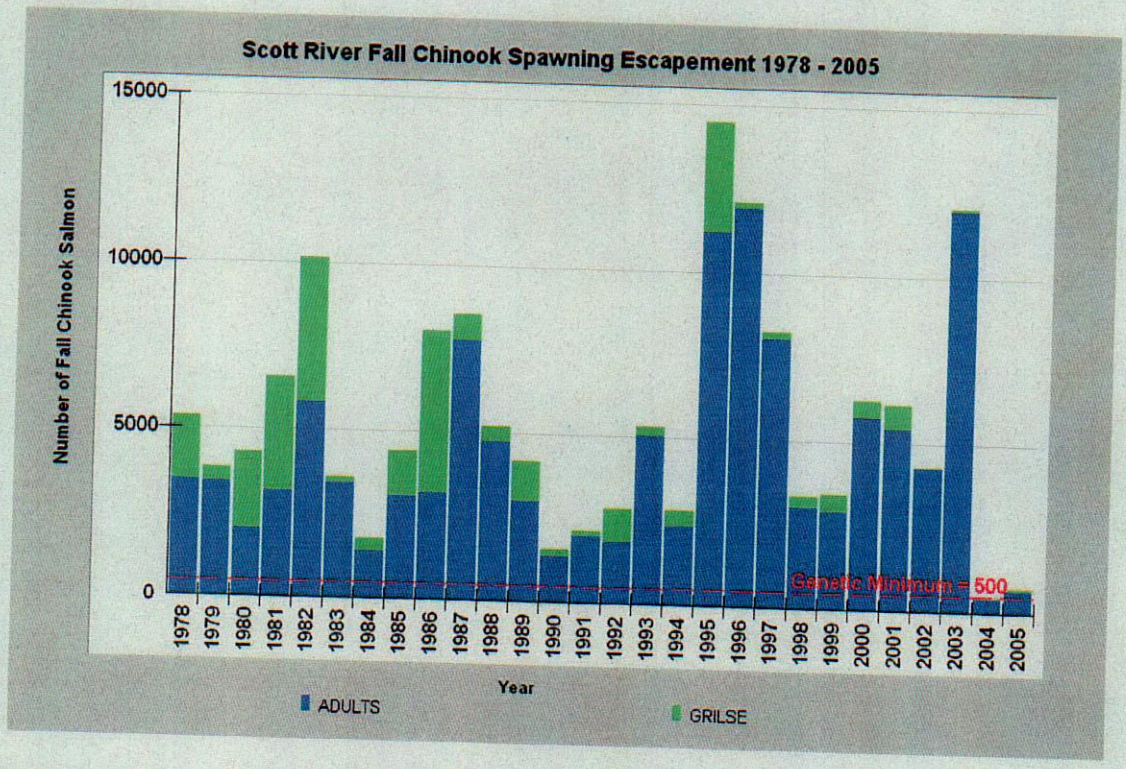

Figure 1. Scott River fall chinook salmon returns showing a minimum viable population size reference from Gilpin and Soule (1990).

Previous comments on the Scott TMDL by Kier Associates also pointed out that timber harvest in riparian zones along coho bearing streams had been active in recent years. Riparian zones are already much depleted with deleterious effects on both water temperatures and potential large wood recruitment. Coho juveniles remain in fresh water for a year and require cold water and pools formed by large wood. Scott River coho populations are at a very low level and immediate action is needed to stop any further harvest of large trees within the riparian zone of streams where coho juveniles rear.

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